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## FINAL NOTICE

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To: **Eastern Western Motor Group Limited (FSA ref: 310505)**

Of: **8 Westerton Road**

**Broxburn**

**Edinburgh**

**EH52 8BE**

Date: **19 December 2006**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (the FSA) gives you final notice of the publication of a statement that you have contravened requirements imposed on you under the Financial Services and Markets Act 2000.**

### **1. THE PUBLIC CENSURE**

- 1.1 The FSA gave you a Decision Notice on 19 December 2006 which notified you that, pursuant to section 205 of the Financial Services and Markets Act 2000 (the Act), the FSA had decided to publish a statement that Eastern Western Motor Group (EWMG/the Firm) had breached Principles 2, 3 and 7 of the FSA's Principles for Businesses, between 14 January 2005 and 30 June 2006 (the relevant period).
- 1.2 The Firm has confirmed that it will not be referring the matter to the Financial Services and Markets Tribunal. Accordingly, having agreed with the Firm the facts and matters relied on, the FSA publishes this Final Notice, which constitutes a public censure or statement, detailing the contravention of requirements imposed on the Firm under the Act.

## 2. REASONS FOR THE PUBLIC CENSURE

### *Summary of EWMG's Breaches*

- 2.1 The FSA publishes this public censure of EWMG in respect of breaches of the Principles detailed above. These breaches relates to EWMG, as an authorised insurance intermediary, selling payment protection insurance (PPI), which they sold with vehicle finance agreements.
- 2.2 The breaches, which are described in detail in section 4 below, primarily concern EWMG's failure to:
  - a. sufficiently apportion compliance responsibilities amongst EWMG's senior management and to act in a timely and effective manner when compliance failings were identified;
  - b. keep adequate records of PPI policies sold on customer files;
  - c. provide customers with a statement of price for the PPI policy in a durable medium which included a total price for the product, which was clear and fair; and
  - d. ensure appropriate training and monitoring of sales staff.
- 2.3 EWMG's failings, particularly those regarding the statement of price, may have placed a small number of customers at a disadvantage. The failure to provide each customer with a document clearly stating the total price of the PPI policy created a risk of consumer detriment. A clear statement of price is essential in order for a customer to be able to determine whether the PPI policy is suitable for them.
- 2.4 The other failings identified resulted in an unacceptable risk of EWMG's PPI sales potentially leading to consumer detriment. In particular, EWMG could not determine whether sales staff were conducting the sales process in a manner which paid due regard to the information needs of customers, as there was little or no monitoring of sales staff.
- 2.5 In deciding upon this disciplinary measure, the FSA recognises the following measures taken by EWMG, which are described in detail in section 6 below:
  - a. before the FSA investigation, EWMG had already employed independent compliance consultants to audit and implement a compliance programme. The implementation of some of the programme was underway when EWMG was referred to Enforcement;
  - b. EWMG has committed a customer contact exercise to ensure its customers have not suffered detriment; and
  - c. EWMG has co-operated fully with the Enforcement team. It has agreed the facts quickly, ensuring efficient resolution of the matter.

### 3. RELEVANT STATUTORY AND HANDBOOK PROVISIONS

#### *Statute*

3.1 Section 205 of the Act states:

*“If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect.”*

#### *Principles*

3.2 The FSA's Principles for Businesses, as set out in the FSA's Handbook of Rules and Guidance, relevant to this case are:

- a. Principle 2: *"A firm must conduct its business with due skill, care and diligence."*;
- b. Principle 3: *"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."*; and
- c. Principle 7: *"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*.

#### *Rules*

3.3 In addition to the above Principles, the following rules are also relevant:

- a. in the part of the FSA Handbook (the Handbook) entitled Senior Management Arrangements, Systems and Controls (SYSC), SYSC 2.1.1R and SYSC 3.2.20R;
- b. in the part of the Handbook entitled Insurance Conduct of Business (ICOB), ICOB 5.5.14R; and
- c. in the part of the Handbook entitled Training and Competence (TC), TC 2.3.1R and TC 2.7.5AR.

#### *Legal Effect of Principles and Rules*

3.4 The FSA's Principles and Rules constitute requirements imposed on authorised persons under the Act.

#### *Guidance*

3.5 The FSA's policy in deciding whether to take disciplinary action in general is set out in the Handbook at Chapter 11 of the Enforcement Manual (ENF) and in respect of a public censure, the FSA's policy is set out at Chapter 12 of ENF. The FSA has had particular regard to the guidance detailed in ENF at 12.2.2 and the factors listed at ENF 12.3.3, in determining whether to issue a public censure.

## **4. FACTS AND MATTERS RELIED UPON**

### **Background Facts**

#### *Eastern Western Motor Group*

- 4.1 EWMG is a franchised car dealership group, which has a significant presence in Scotland and Newcastle. EWMG's primary business is the sale of new and used cars, with 23 dealerships selling PPI. Each dealership is managed by a dealer principal. EWMG has been authorised since 14 January 2005 and employs approximately 150 sales staff.

#### *Payment Protection Insurance (PPI)*

- 4.2 Customers who arrange finance agreements through EWMG are offered PPI policies which offer four levels of cover; life, critical illness, accident and unemployment. The insurance premium is calculated as a percentage of the vehicle finance purchased and by the level of cover selected by the customer. The PPI policies may be manufacturer backed, when sold in conjunction with manufacturer finance schemes, or provided by an independent third party finance and insurance administrator.

#### *The Sales Process*

- 4.3 During the process of selling a car, finance and PPI, EWMG uses a standard customer enquiry proforma for recording details from customers. This form collates all the information in one place and comprises, for the purposes of PPI policies, the Initial Disclosure Document, Statement of Demands and Needs and Personal Recommendation. The process of selling finance and insurance varies between dealership. In over half of the dealerships the PPI sales process is handled by a business manager, after a sales executive has completed the primary car sale. In other dealerships, the entire sales process, for the car, finance and PPI, is handled by the same sales executive. Fifty five members of EWMG's sales staff are involved in the sale of PPI across the business. EWMG operates on an advised sale basis.

### **Matters leading to breaches of the FSA's Principles for Businesses**

#### *Senior Management Arrangements*

- 4.4 Given the geographical spread of dealers and the number of sales staff engaged in selling PPI across the business, the FSA found there was inadequate apportionment of responsibilities among EWMG's directors and senior managers during the relevant period. There was no delegation of clear and defined compliance responsibilities to each dealer principal, to ensure adequate monitoring and control of PPI sales to comply with FSA requirements. Consequently, there was inadequate provision in each dealership for the monitoring of sales staff. As a result of this failing, consumers were placed at increased risk of being sold inappropriate PPI policies. The FSA finds that EWMG failed to take reasonable care to organise and control its affairs responsibly and effectively and consequently this is a breach of Principle 3.

- 4.5 EWMG employed independent compliance consultants to audit the Group in December 2005 and dealerships during early 2006. Areas where improvement was required were identified to EWMG's directors and senior management by the consultants during early 2006. Introduction of the main improvements commenced in July 2006. The delay in addressing these issues extended the period during which customers were exposed to risk, before the firm acted upon and implemented the consultant's recommendations. As a consequence of this delay and in this regard alone, there was a failure by the firm to conduct its business with due diligence, which caused the firm to breach Principle 2.

#### *Record Keeping*

- 4.6 There was inconsistent and inadequate record keeping in relation to customer files where PPI policies had been sold. There was no means of verifying, for the purposes of internal and external auditing, what information had been given to each customer and in what format. On some customer files it was not clear what level of PPI cover the customer had actually decided to purchase. As a consequence of the inadequate record keeping, senior management had no means of ensuring sales staff were conducting compliant PPI sales, particularly in respect of document and information provision to customers.
- 4.7 Senior management had instructed sales staff to provide customers with particular documents and information during the course of the sales process, but there was no recording of this on the customer file. This increased the risk to customers that they would not receive the appropriate documents and information prior to the conclusion of the PPI sale. There was no prompt for the sales staff to provide specific documents on the standard proforma used and no means by which EWMG's management could check which documents were being routinely provided.
- 4.8 In the event of a customer making a claim on the insurance or making a complaint, EWMG could not rely upon its own records to establish what information had been provided to the customer and the precise type of policy cover the customer had purchased. This placed customers at additional risk in the event of a disputed claim or if they complained about the PPI policy. EWMG failed to organise and control each dealership responsibly and effectively, to ensure that adequate records were retained on customer files and to control the sales process adopted by sales staff. These failings are a further breach of Principle 3.

#### *Customer Information - Statement of Price*

- 4.9 The FSA found that prior to the conclusion of the PPI sale, customers did not receive all of the information relating to the cost of the insurance premium, as required by the ICOB rules. EWMG used a laminated card, held by each sales executive and business manager, which showed how the PPI insurance premium was calculated as a percentage of the finance amount arranged. EWMG sales staff also used a PPI spreadsheet calculator to generate a monthly premium statement on a computer print out, which was provided to customers. However, customers did not receive a document which set out the total cost of the insurance policy before the contract was concluded. It was insufficient for EWMG to provide the cost of the PPI on a monthly basis only.

- 4.10 The exception to this was a number of customers arranging PPI through Mini Finance, who were shown the total cost of the premium on the Direct Debit form they signed. However, even in these cases, there was no evidence that this was provided to the customer in a durable medium, or that it was done in good time before the contract was concluded.
- 4.11 The failure to provide a statement of the total price is a breach of Principle 7. The cost of the premium is a significant factor for customers to consider before purchasing the insurance. Premiums ranged between 6 and 12% of the value of the loan and therefore involved significant sums of money.

#### *Training and Monitoring*

- 4.12 There was no system in place for checking the training of new sales staff and for ensuring that these staff received suitable training within an appropriate time frame. EWMG, like other vehicle retailers, has a relatively high turn-over of sales staff which increases the importance of effective control of training arrangements, particularly with regard to new sales staff.
- 4.13 There was also no differentiation in the training needs between sales staff and those overseeing sales staff, such as sales managers or dealer principals, who have different and greater compliance responsibilities. Furthermore, there was no assessment of employees training needs and consequently no means of arranging training to address those needs.
- 4.14 EWMG had no appropriate arrangements in place to ensure that monitoring of staff selling PPI occurred on a regular basis. Monitoring forms for sales staff had been devised by the director overseeing compliance and sent out to dealer principals. Only two monitoring forms, from a total of 55 sales staff selling PPI, had been completed during the relevant period and these were both at the same dealership. The FSA found that the EWMG did not take adequate steps to make sure dealer principals monitored their staff.
- 4.15 EWMG was new to FSA regulatory requirements and standards. Consequently, sales staff were unlikely to have the necessary knowledge or skills to consistently conduct compliant sales. The absence of an effective monitoring regime and the failure to ensure the timely training of new staff undermined EWMG's attempts to ensure they complied with FSA requirements and standards.
- 4.16 EWMG's failure to ensure adequate training and monitoring of sales staff engaged in selling PPI policies is a breach of Principle 3. Ensuring adequate training and monitoring is an integral part of an authorised person's risk management systems. The absence of effective training and monitoring provisions at EWMG caused their customers to be placed at risk of detriment, by being sold an inappropriate PPI policy or not being provided with important policy information by sales staff.

## **5. REMEDIAL ACTION**

- 5.1 EWMG commenced remedial action in early 2006 in conjunction with compliance consultants. It has taken steps, with the assistance of their compliance consultants, to improve record keeping, training and monitoring arrangements in order to meet FSA standards. Two further exercises identified by the FSA have now been incorporated into the remedial programme and completed. These were a customer contact exercise, completed in November 2006, to ensure customers had not suffered detriment and a procedure to ensure the provision of the total price at the point of sale.

## **6. MITIGATING FACTORS**

- 6.1 In determining the disciplinary measure appropriate to the breaches of Principles identified, the FSA acknowledges the mitigating factors detailed below:
- a. the number of PPI policies sold in each dealership is low (in the relevant period, EWMG only sold 199 PPI policies out of 21,982 vehicle sales, which represents a policy on less than 1% of their sales);
  - b. EWMG had sought independent compliance advice and out-sourced certain compliance functions (e.g. training, audits) in December 2005 prior to any FSA Supervision or Enforcement interest, indicating an intention to comply with FSA requirements;
  - c. EWMG cooperated fully with the FSA and has not been subject to investigation or enforcement action before; and
  - d. in the relevant period, only one complaint was received in relation to PPI cover.

## **7. DISCIPLINARY MEASURE**

- 7.1 The FSA has considered the nature and extent of the breaches of FSA Principles and the mitigating factors detailed above, when deciding upon a public censure as the appropriate disciplinary measure in this case.
- 7.2 But for the limited number of PPI policies actually sold, a financial penalty would have been proposed.
- 7.3 In accordance with section 390(3)(a) of the Act, the contents of this Final Notice constitute the terms of the published statement detailing EWMG's contravention of requirements imposed on the Firm under the Act.
- 7.4 In accordance with section 390(3)(b) of the Act, the contents of this Final Notice constituting the terms of the statement detailing EWMG's contravention of requirements imposed on the Firm under the Act, shall be published on the FSA's Website on the business day after the day on which this Final Notice is transmitted to the Firm.

**8. DECISION MAKER**

8.1 The decision which gave rise to the obligation to give this Final Notice was made by the Executive Settlement Decision Makers on behalf of the FSA.

**9. IMPORTANT**

**9.1 Relevant Statutory Provision**

This Final Notice is given to the Firm in accordance with section 390 of the Act.

**9.2 Publicity**

Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**10. FSA CONTACTS**

10.1 For more information concerning this matter generally, you should contact Graham Turner, at the FSA (direct line: 020 7066 1432).

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**William Amos**  
**Head of Retail 1**  
**Enforcement Division**